Supreme Court, U.S.
FILED
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(1)

No. 02 755

IN THE

Supreme Court of the United States

CITY OF GARLAND, TEXAS,

Petitioner,

v.

DOUGLAS R. LARSON,

Respondent.

On Petition for Writ of Certiorari
To the United States Court of Appeals
For the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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35 pp

Question Presented for Review

1. Did the court of appeals, having determined that the record was factually insufficient to support the district court's award of sanctions, err by rendering judgment and not remanding the case to the district court for further proceedings consistent with its opinion?

Parties to the
Proceedings in the Court of Appeals

City of Garland, Texas
Brian England
Douglas R. Larson

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Citations to Reports of Opinions and Orders Entered

The decision of the United States Court of Appeals for the Fifth Circuit (Appendix, pp. A-2 through A-11) is unreported.

The order of the United States Court of Appeals for the Fifth Circuit denying rehearing (Appendix, pp. A-12 through A-13) is unreported.

The order of the Magistrate Judge for the United States District Court for the Northern District of Texas (Appendix, pp. A-14 through A-16) is unreported.

The order of the United States District Court for the Northern District of Texas (Appendix, pp. A-17 through A-19) is unreported.

Statement on Jurisdiction

The judgment of the Court of Appeals was entered on July 15, 2002. The Court of Appeals entered an order denying rehearing on August 15, 2002. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(2).

Statutes Involved in the Case

None.

Statement of Facts

The underlying case was a civil rights lawsuit involving alleged violations of Plaintiff Piedad Gonzales' rights in connection with her stop and arrest by Defendant Brian C. England ("England"), a police officer for the City of Garland, Texas (the "City"). The matter was tried on June 5, 2000.

Immediately prior to trial, Plaintiff's counsel, Douglas R. Larson ("Larson") issued a trial subpoena compelling the testimony of Ronald Jones ("Jones"), an attorney for the Garland City Attorney's office who represented England. (Record Vol. 2 at pp. 320-21; Supp. Record Vol. 4 at p. 22). At the pre-trial conference, the City objected to Jones being called to testify as a witness. (Supp. Record Vol. 4 at pp. 17-18).

Immediately prior to Jones' testimony, Larson told the district court that he needed Jones' testimony to establish that subpoenas for several deposition witnesses were not complied with and that Jones did not produce the information requested in the subpoenas. (Record Vol. 6 at p. 181). Larson wholly failed to demonstrate these points through Jones' testimony. (*See* Record Vol. 6 at pp. 186-99) The record, however, does not reflect that any subpoenas were actually served upon Jones or the deposition witnesses. (Supp. Record Vol. 4 at p. 42). Instead, the record showed that Jones voluntarily provided

Larson with the available information without subpoena. (Record Vol. 6 at pp. 186-89). Furthermore, the need for Jones' testimony regarding the allegedly missing documents could not have advanced Larson's client's cause in any event, because the documents that were allegedly "missing" would have harmed the plaintiff's case and helped the defendant.

Accordingly, the City and England filed a motion for sanctions against Larson, asserting that Larson's conduct in calling Jones to testify was in bad faith and involved misrepresentations to the district court. (Record Vol. 2 at pp. 509-93). The district court referred the matter to the magistrate judge, who awarded sanctions against Larson. (Record Vol. 3 at p. 1; Appendix at pp. A14-A16). Larson objected to the magistrate judge's findings and moved for a stay, which was granted, pending the determination of his objections. (Record Vol. 3 at p. 264). The district court affirmed the magistrate judge's award of sanctions, but increased the amount of the sanction. (Appendix at pp. A17-A19).

Reason For Granting The Petition

The Court should grant this Petition so as to clearly delineate and protect the right of the district court to manage the cases and attorneys before it. The decision of the court of appeals to reverse and

render this matter has deprived the district court of the opportunity to clarify its reasons for imposing the sanctions.

An order granting sanctions is properly reviewed under an abuse of discretion standard, and if possible and reasonable, the district court's actions are reviewed in a favorable light. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); *Natural Gas Pipeline v. Energy Gathering*, 2 F.3d 1397, 1410 (5th Cir. 1993). Under an abuse of discretion standard the reviewing court should give great deference to an order imposing sanctions. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990); *Whitehead v. Food Max of Mississippi, Inc.*, 277 F.3d 791, 793 (5th Cir. 2002). The basis for this rule is that "the district court is better situated than the court of appeals to marshal the pertinent facts. . . ." *Whitehead*, 277 F.3d at 793 (citation omitted).

Reversal of the decision of the district court should come only if the ruling is based "on an erroneous view of the law, or on a clearly erroneous assessment of the evidence." *Cooter*, 496 U.S. at 405. In conducting a review of a sanctions order, a court's role is to review the district court's ruling for an abuse of discretion rather than conduct a de novo review of the record. "[I]n reviewing sanctions imposed under the district court's various sanctioning powers, we will not suppose to substitute our judgment for that of the trial court, when it comes to

enforcement of acceptable standards of litigation conduct." *Topalian v. Ehrman*, 3 F.3d 931, 935 (5th Cir. 1993).

In the case at bar, the court of appeals focused on the assessment of the evidence by the district court. In the absence of an explanation from the district court of the basis for affirming the magistrate judge's order, the court of appeals expressed concern that the district court's allowing Jones to testify was inconsistent with the subsequent sanctions ruling. This supposed inconsistency led the court of appeals to determine that the sanctions issue was, for all intents and purposes, mooted at the moment the district court ruled on the City's pretrial objection to Jones' testimony. This purported inconsistency led the court of appeals to reverse and render the matter.

It was not the determination of the appeal, but the rendition of the matter that was error. The courts stand in a certain relationship to one another, such that the district courts retain the basic responsibility of fact-finding, while courts of appeal are the arbiters of the law. *See Pullman-Standard v. Swint*, 456 U.S. 273, 291-92 (1982); *De Marco v. United States*, 415 U.S. 449, 450 (1974). Accordingly, when a court of appeals makes a determination based upon a point of factual insufficiency, the matter is then returned to the district court for further proceedings - that is, the court of appeals does not get involved in the factual

determinations that are the province of the district court. *See Maine v. Taylor*, 477 U.S. 131, 145-46 (1986). Where it is unclear whether the factual circumstances not appearing of record may support a particular action, the matter should be remanded, unless the record dictates that there can be only one resolution of the factual issue. *Pullman-Standard*, 456 U.S. at 292; *See Kelley v. Southern Pacific Co.*, 419 U.S. 318, 331 (1974).

In the case at bar, if the findings of the district court were factually inadequate to support the district court's order, the court of appeals was obligated to remand the matter for further proceedings. *See Pullman-Standard*, 456 U.S. at 291-92; *Icicle Seafoods, Inc. v. Worthington*, 475 U.S. 709, 714 (1986); *Topalian v. Ehrman*, 3 F.3d 931, 938 (5th Cir. 1993). When the court of appeals was unable to discern a sufficient factual basis for the sanctions, it should have permitted the district court an opportunity to revisit the matter and clarify the basis for the sanctions. Although the court of appeals believed that the award of sanctions was inconsistent with the district court's prior actions, the district court might be able to explain a rational basis for its decision (e.g. - that it believed Larson had misrepresented the underlying facts to the district court). The court of appeals took the position that the referral of the motion for sanctions to the magistrate did not make

sense and that the district court having permitted Larson to call Jones to testify essentially mooted the issue at hand. However, the matter of the sanctions was a complex issue and should not be dismissed as a simple inconsistency. The district court may have referred the sanctions matter to the magistrate in order to get a "second" or independent opinion as to Larson's conduct, and the actions of the district court in allowing Jones to testify and thereafter approving sanctions against Larson, strongly suggests that the district court had some significant basis for approving the sanctions, perhaps believing that it had been misled by Larson.[1] This is, admittedly, speculation, but highlights that a remand would have been particularly appropriate here, where the matter concerns the ability of the district court to protect its authority and integrity through the discipline of those who appear before it. Certainly, the circumstances are not such that the record commands only one resolution of the factual issue; the district court's order was simply insufficient to meet the legal standard for sanctioning Larson, but the facts known to the district court may still warrant such sanctions.

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[1]In fact, the district court not only affirmed the magistrate judge's award of sanctions, but increased the amount awarded by the magistrate judge.

Conclusion

The City seeks review in this matter solely to request that the Court reverse the court of appeals and direct that the court of appeals modify the disposition of this appeal to specify a remand to the district court for further proceedings. The Court should grant the petition so as to clarify and delineate the right of district courts to protect their authority and discipline those that appear before them.

Respectfully submitted,

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Appendix

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"U.S. COURT OF APPEALS
F I L E D
JUL 15 2002
CHARLES R. FULBRUGE III
CLERK"

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-10974

PIEDAD GONZALES,
Plaintiff

versus

BRIAN C. ENGLAND,
Garland Police Officer, Badge No. 267,
Defendant-Appellee

versus

DOUGLAS R. LARSON,
Movant-Appellant

versus

CITY OF GARLAND, TEXAS,
Movant-Appellee.

Appeal from the United States Court for the
Northern District of Texas
No. 3:96-CV-2673

Before KING, Chief Judge, PARKER and CLEMENT, Circuit Judges.

PER CURIAM:*

Movant-Appellant Douglas C. Larson ("Larson"), the attorney for the plaintiff in the underlying lawsuit, appeals from a sanctions order issued against him by the magistrate judge and affirmed by the district court. The magistrate judge sanctioned Larson because she determined that Larson acted in bad faith in subpoenaing one of the defendant's attorneys to testify in the underlying lawsuit. Finding the issuance of the sanctions order was an abuse of discretion, we REVERSE.

I. INTRODUCTION

The sanctions issue springs from the actions taken by Larson in representing his client, Piedad

*Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4

Gonzales, during the course of the underlying lawsuit. Thus, we briefly summarize the facts of the underlying case.

Piedad Gonzales sued Defendant-Appellee Brian C. England ("England"), a Garland City Police Officer, for civil rights violations arising from the stop of her vehicle and subsequent arrest. She claimed that England improperly stopped her vehicle based on a computer report from an undetermined and unverified source that the vehicle she was driving had been stolen.

During pre-trial proceedings, Larson, on behalf of his client, filed a motion for sanction in the district court against England and England's attorney, Ronald Jones. Larson claimed that Jones was not producing all of the fields of relevant information available through the police department's computer records and was thus engaged in a "cover-up" of England's actions. The district court denied the motion.

On September 30, 1998, James Jordan entered an appearance as lead attorney for England. Ronald Jones, the previous lead counsel, subsequently played a less significant role in representing England.[1] On October 20, 1998, Larson designated

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[1]The parties contest whether Ronald Jones remained on the case as an attorney after James Jordan entered the case as lead counsel. The record shows that Jones did not appear as counsel of record on the pleadings after Jordan entered the

Jones as a potential trial witness pursuant to Fed. R. Civ. P. 26. The disclosure filed with the district court stated that "Mr. Jones, as a Garland City Attorney and as England's lawyer, covered up evidence that England's computer did not show that there was a basis to arrest or stop the plaintiff." England also designated Jones as a potential witness based on his knowledge about the disposition of the traffic ticket that Gonzalez was issued on the day of the arrest.

The trial was set for June 5, 2000. On May 25, 2000, Larson issued the trial subpoena for Jones to obtain Jones' trial testimony. The subpoena was served on Saturday, June 3, 2000. On the day of trial, England moved to quash the Jones trial subpoena and also moved for sanctions. However, the district court ruled that Jones could testify and Jones did testify during the trial.

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case in September 1998. However, there is other evidence in the record to suggest that Jones remained on as co-counsel to England throughout the rest of the case. Indeed, Larson's questioning of Jones at trial indicates that Larson still considered Jones to be one of England's lawyers at the time he issued the subpoena. In any event, the magistrate judge clearly found that Jones was one of England's attorneys at the time Larson subpoenaed Jones to testify and that Larson knew Jones was still an attorney in the case. There is ample evidence to support this finding and thus our decision in this case operates on the presumption that Larson subpoenaed one of his opposing lawyers to testify at trial.

After the jury returned its verdict in favor of the defendant and final judgment was entered, Gonzales responded to the motion to quash and for sanctions, arguing that it should be denied. England then moved to withdraw the motion without prejudice. The district court granted the motion.

England and the City of Garland subsequently refiled the motion for sanctions. The district court referred the matter to the magistrate judge pursuant to 28 U.S.C. § 636 (b). After holding a hearing, the magistrate ruled that Larson's conduct in subpoenaing Jones to testify was made in bad faith. The magistrate sanctioned Larson by ordering him to pay $15,000 in attorneys fees and costs to England and the City of Garland. Larson filed objections to the magistrate judge's findings with the district court. The district court affirmed the magistrate judge's sanctions order under a "clearly erroneous" standard of review and ordered Larson to pay the movants an additional $7,290 in attorneys fees. Larson appeals from this ruling.

II. STANDARD OF REVIEW

The magistrate judge issued its sanctions order pursuant to a court's inherent authority to punish conduct which abuses the judicial process. *Chambers v. NASCO, Inc.*, 501 U.S. 532, 534-45 (1991). We review such an imposition of sanctions for

abuse of discretion. *Natural Gas Pipeline v. Energy Gathering, Inc.*, 2 F.3d 1397, 1411 (5th Cir. 1993).

III. DISCUSSION

After considering the arguments of each party and the record evidence, we find that the magistrate abused her discretion in determining that Larson's conduct was taken in bad faith. We do so for several reasons.

First, our primary concern in this case is to make sure the district court was not ambushed at the last minute by Larson's request to call Jones as a witness. Our review of the record indicates that the district court was not blind-sided by this request. Larson notified the district court early in the pre-trial proceedings in a response to England's summary judgment motion that he believed Jones was not providing him with important documents relevant to plaintiff's case. He specifically listed Jones as a trial witness and explained that Jones would be called to testify concerning the alleged cover-up. More importantly, the record shows that Larson specifically informed the district court at the pre-trial conference that he intended to call Jones to the stand to question him about the alleged missing computer-generated information. Larson subsequently stuck to that line of questioning during the trial.

Jones' trial testimony demonstrates that Larson did not make much headway in trying to prove

that Jones was involved in a coverup. However, Larson's questioning of Jones did raise a plausible point concerning whether all computer information related to the incident which was available from Mesquite was turned over to the plaintiff. The fact that Larson was not ultimately successful in his questioning of Jones does not mean that Larson acted in bad faith in questioning a witness concerning an issue that was relevant to the plaintiff's case.

The district court had all the necessary information before it at the time of trial to determine whether Jones should be allowed to testify. The district court decided that Jones could testify. Thus, the sanctions issue should have become moot at that point in time. We fail to see why the sanctions issue was referred to the magistrate judge for a ruling after the district court - knowing all the relevant circumstances surrounding the issuance of the trial subpoena - had already determined that Jones could properly testify.[2]

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[2]Larson also raises the issue of whether the magistrate had the authority under 28 U.S.C. § 636 to issue the sanctions order or was limited to filing a report and recommendation so the district court could conduct a *de novo* review. While we agree that very serious questions exist as to whether the magistrate had the authority to enter the sanctions order, we need not resolve this matter because of our determination that Larson's conduct does not constitute "bad faith" as a matter of law.

Second, as previously mentioned, it is undisputed that Jones was designated by both parties as a trial witness. England argues that Larson's issuance of the subpoena to Jones on the eve of trial hampered England's ability to prepare for trial. This argument misses the point. Of course, the subpoena required England's counsel to do extra work, but England cannot claim to be unfairly surprised by the subpoena of a witness which both sides had designated as a trial witness.

England strains its own credibility in arguing that Larson should be sanctioned for subpoenaing a witness that England himself had listed on his witness list. Because England had designated Jones as a trial witness, England could have properly called Jones to the stand during his own case in chief without unfairly surprising the plaintiff. To paraphrase, what is fair for the goose is also fair for the gander.

England also claims that his ability to conduct his trial defense was harmed because Jones was not able to stay in the courtroom on the first day of the trial after the invocation of "The Rule." This argument is also a red herring.

It is true that Jones was unable to stay in the courtroom during the first day of the trial due to the invocation of "The Rule" and thus Jones was impeded in his ability to assist Jordan in trying the case. However, if Jones was truly needed in the courtroom

to aid in the defense, it stands to reason that lead counsel Jordan would have asked for an exception to "The Rule" so that Jones could stay in the courtroom. It is telling that he never made this request to the district court. Thus, England's contention that Jones' exclusion from the courtroom prejudiced his case falls flat. Any alleged problem which arose form Jones being removed from the courtroom due to the invocation of "The Rule" should have been taken up with the district court at the time of trial.

We also cannot accept the magistrate judge's justification for discounting the fact that Larson had listed Jones as a witness in the pre-trial disclosures. According to the magistrate judge, it is a common practice for attorneys to designate their opposing counsel as witnesses out of an abundance of caution even though the attorneys do not truly intend to call their opposing counsel to the stand. Thus, the magistrate reasoned that Larson's designation of Jones as a witness in pre-trial disclosures should not have alerted England to the fact that Larson intended to call Jones as a witness. In our view, the magistrate's observation and rationale are simply incorrect. Larson's designation of Jones as a witness on the pre-trial disclosures put England on notice that Jones was "fair game" and could be properly called as a witness.

Finally, we note that Larson's unrefuted testimony is that he consulted outside counsel as to

the propriety of calling Jones as a witness. The outside counsel advised Larson that it would be appropriate to subpoena Jones for trial. This fact cuts against any finding that Larson engaged in "bad faith" conduct.

IV. CONCLUSION

For these reasons, the district court order affirming the magistrate's sanctions order and ordering Larson to pay a total monetary sanction in the amount of $22,920 is hereby REVERSED.

"U.S. COURT OF APPEALS
F I L E D
AUG 15 2002
CHARLES R. FULBRUGE III
CLERK"

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-10974

PIEDAD GONZALES,
Plaintiff

versus

BRIAN C. ENGLAND,
Garland Police Officer, Badge No. 267,
Defendant-Appellee

versus

DOUGLAS R. LARSON,
Movant-Appellee

versus

CITY OF GARLAND, TEXAS,
Movant-Appellee.

Appeal from the United States Court for the
Northern District of Texas, Dallas

Before KING, Chief Judge, PARKER and CLEMENT, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing is "denied."

ENTERED FOR THE COURT:

"/s/ Robert M. Parker"
United States Circuit Judge

"U.S. DISTRICT COURT
FOR THE NORTHERN
DISTRICT OF TEXAS
F I L E D
FEB 23 2001
CLERK, U.S. DISTRICT COURT"

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

PIEDAD GONZALES,

Plaintiff

v. CIVIL ACTION NO
3:96-CV-2673-R

GARLAND POLICE OFFICER
BRIAN C. ENGLAND, Badge #267,

ORDER IMPOSING SANCTIONS

On November 22, 2000, Movants, the City of Garland and Brian England, filed a Motion to have Sanctions entered against Douglas R. Larson for his action of issuing a trial subpoena to Ron Jones II, trial counsel for Brian England, two days before the commencement of trial. Having considered the

pleadings filed and the evidence presented, the Court finds, by clear and convincing evidence, as explained by the Court at its January 30, 2001 hearing, that Douglas R. Larson acted not in bad faith and in violation of this District's order in Dondi Properties Corporation v. Commerce Savings and Loan, et al., 121 F.R.D. 284 (N.D. Tex. 1988). Therefore, under its inherent powers the Court orders Douglas R. Larson to never repeat the objectionable behavior as fully explained by the Court at the January 30, 2001 hearing and further orders Douglas R. Larson to pay to the Movants by no later than March 1, 2001, their attorneys fees and costs associated with the Motion for Sanctions in the amount of $15,000, this amount established by the affidavit of Linda S. Eads filed with the Court on February 2, 2001 and supplemental affidavit filed Feb. 6 2001 and this Court's first-hand knowledge of the efforts by the attorney for the movant to prepare and present the motion based on the Court's observation of the presentation at the hearing and the filings.*

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*"The hearing on the instant motion for sanctions was held January 17, 2001. The Court spent an extensive amount of time after the hearing reviewing the record, pleadings and applicable law. On January 30, 2001, the Court convened a second time and dictated detailed findings of fact and conclusions of law on the record to support its order granting the motion for sanctions. Those findings are relied upon and incorporated herein by reference."

It is so ORDERED

Signed: February 23, 2001

" /s/ Jane J. Boyle"

JANE J. BOYLE
UNITED STATES MAGISTRATE JUDGE

"U.S. DISTRICT COURT
FOR THE NORTHERN
DISTRICT OF TEXAS
F I L E D
JUN 21 2001
CLERK, U.S. DISTRICT COURT"

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

PIEDAD GONZALES,

Plaintiff,

v. CIVIL ACTION NO
3:96-CV-2673-R

GARLAND POLICE OFFICER
BRIAN C. ENGLAND, Badge #267,

Defendant

ORDER AFFIRMING MAGISTRATE'S
FEBRUARY 23, 2001 SANCTIONS ORDER

On February 23, 2001, the Magistrate Judge entered an order imposing sanctions on Douglas R. Larson for his action of issuing a trial subpoena to

Ron Jones II, trial counsel for Brian England, two days before the commencement of trial. This order found, by clear and convincing evidence that Douglas R. Larson acted both in bad faith and in violation of this Districts order in Dondi Properties Corporation v. Commerce Savings and Loan, et al. The Magistrate Judge ordered Douglas R. Larson to never repeat the objectionable behavior as fully explained by the Magistrate Judge to Mr. Larson at the January 30, 2001 hearing, and further the Magistrate Judge ordered Mr. Larson to pay movants their attorneys fees in the amount of $15,000.

After considering the Objections to this Order filed by Douglas R. Larson and the response to those objections filed by Brian England and the City of Garland, and after considering the Magistrate's findings of fact and conclusions of law as fully set forth by the Magistrate at the January 30, 2001 hearing, the court affirms the Magistrate's February 23, 2001 Order as being fully supported by the facts and the law and as not being clearly erroneous.

Further, the court finds that the Objections filed by Douglas R. Larson to the Magistrate's Order were frivolous. Therefore, under Federal Rule of Civil Procedure 11, the court orders Douglas R. Larson to pay the movants attorneys fees in an additional amount of $7,920.

The Court further orders Douglas R. Larson to pay to the Movants in such total amount of $22,920 by no later than July 23, 2001.

IT IS SO ORDERED.

Signed: June 21, 2001

"/s/ Jerry Buchmeyer"
JERRY BUCHMEYER
UNITED STATES DISTRICT JUDGE